

## **Watchdog orders funeral plan providers compensate Aboriginal customers over deceptive conduct**

*One complainant was sold a funeral plan for five people, including two babies aged less than one*



*Financial watchdog finds funeral plan providers engaged in misleading, deceptive and unconscionable conduct towards Aboriginal people.*

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Funeral plan providers have been ordered to refund or compensate \$1.34m in the past two years after the Australian Financial Complaints Authority found some had engaged in misleading, deceptive and unconscionable conduct targeting Aboriginal people.

The majority of complainants to the Australian Financial Complaints Authority (AFCA) in the past two years identified as Aboriginal or Torres Strait Islander, according to statistics provided by the authority. One complainant was sold a funeral plan for five people, including two babies aged less than one.

In the 2020-21 financial year the authority received 178 funeral plan complaints relating to a range of companies and awarded \$460,000 in compensation and refunds. In 95 of these cases the complainant identified as Aboriginal or Torres Strait Islander.

But in less than five months in the current financial year, the authority had received 144 complaints and awarded \$880,000 in compensation and refunds. The complainant identified as Aboriginal or Torres Strait Islander in 93 of these cases.

Of 15 determinations recently published by the authority, all related to plans sold to Aboriginal people (14 of these related to plans in New South Wales, and one in South Australia).

The largest refund ordered by the authority in its recent determinations related to a funeral plan sold by Aboriginal Community Benefit Fund (ACBF) for five people, including two infants aged younger than one.

Because of the young age of the infants, it was highly likely the premiums paid on the plan would exceed the benefit paid in the event of their funeral, the authority found in its September determination.

The authority ordered that ACBF repay \$33,275 in premiums because it agreed the fund had misled the family into believing the business was Aboriginal owned and operated, including by the use of a logo similar to the Aboriginal flag and the use of black figures in documents it provided.

The family member who complained to the authority had been making payments to the fund using automatic deductions from her Centrelink benefits.

“She has lived her whole life in a small, predominantly Aboriginal community,” the authority determined.

“The complainant is a strong advocate for Aboriginal services and has supported her community by working in the community and supporting her community through the services she purchased.

“The imagery in the documents provided to the complainant gave the indication ACBF was an Aboriginal organisation. The documents provided to the complainant contain Aboriginal imagery.”

The fund submitted that a disclaimer acknowledging ACBF was not an Aboriginal organisation nor affiliated with any Aboriginal or government organisation was communicated to the complainant verbally and on multiple documents it sent her.

But the authority agreed with the complainant that these disclaimers were insufficient.

“This is because they were presented in small print and alongside complex information an ordinary, reasonable person was unlikely to understand or fully appreciate.”

The authority found ACBF’s conduct was misleading, deceptive, and unconscionable and it had breached its duty to act with “good faith and the standard of conduct required” under the Asic Act.

The fund said repaying the premium would prejudice the rest of its 15,000 members as to do so would breach the NSW funeral funds act. But the authority – which noted

**the fund submitted the same position in relation to all complaints lodged before it – said ACBF refunding premiums did not offend its registration requirements.**